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10/077,740	02/14/2002	Eugene Jarvis	3079.010	3485
7590	09/30/2004			
Max Shaftal PATZIK, FRANK & SAMOTNY LTD. Suite 900 150 South Wacker Drive Chicago, IL 60606				
EXAMINER BROCKETTI, JULIE K				
ART UNIT			PAPER NUMBER	
3713				
DATE MAILED: 09/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/077,740

Applicant(s)

JARVIS ET AL.

Examiner

Julie K Brockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "said poker hands". There is insufficient antecedent basis for this limitation in the claim. The previous reference is to "a poker game" and "an initially dealt hand of cards" but not "poker hands" specifically. The Examiner requires consistency in the wording.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 11 and 13-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoseloff, U.S. Patent No. 6,227,969 B1.** Yoseloff teaches of a method of playing a poker game including an initially dealt hand of cards, a final hand of composition and rankings of poker hands. A first wager is placed that a final hand composition will match one of a plurality of preselected combination of cards. One or more dealt cards are dealt. The player analyzes the dealt cards and undealt cards to determine possible final hand compositions. A proposition bet is provided for at least one possible final hand composition after the dealt cards have been dealt. The player accepts at least one proposition bet and makes a second wager. The necessary cards to complete the hand providing the final hand composition are dealt. It is determined if the final hand composition matches the at least one proposition bet and it is determined if the final hand matches one of a plurality of preselected combination of cards with respect to the first wager (See Yoseloff col. 6 lines 9-63; col. 7 lines 53-67; col. 8 lines 1-22; col. 11 lines 1-20) [claims 11, 13, 14, 15]. For example, a player bets on a normal poker hand and can make a proposition bet based on matching the cards in the final hand to another set of cards. The two wagers are determined independent from one another. A computing device is used for implement the game and includes a display screen and a microprocessor in communication with the screen display. A selection device is in communication with the microprocessor for providing means by which the player interacts with the computing device. A power

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supply is also in electrical communication with the screen display, the microprocessor and the selection device for providing power thereto. The cards are displayed on the screen display and a card determining means is in communication with the computing device for randomly determining in succession the composition of the initial hand of cards and for randomly determining the composition of the final hand of cards. The card combination determining means is used for analyzing the hands of cards to determine possible final hands so as to provide the player with at least one proposition bet to select based on the composition of the final hand after the cards are displayed (See Yoseloff col. 35-63; Fig. 1) [claims 13, 14]. Players are offered at least one proposition bet based on a possible final hand composition containing a specific card combination (See Yoseloff col. 11 lines 5-12) [claim 16]. The player makes a wager on the final composition of the player's hand after the initial deal, but before the draw (See Yoseloff col. 6 lines 9-27) [claim 15]. The specific card combinations can be one or more of the following: royal flush, straight flush, straight, flush, full house, three of a kind, two pair and one pair (See Yoseloff col. 11 lines 5-26) [claim 17].

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carrico et al., U.S. Patent No. 6,416,407 B1 in view of by Yoseloff, U.S. Patent No. 6,227,969 B1.** Carrico et al. discloses a method for playing a draw poker game on a video draw poker gaming machine including initially dealt cards, an opportunity for the player to hold at least one of said initially dealt cards and a final hand composition. A first wager is placed on whether a final hand composition will match one of a plurality of preselected combination of cards (See Carrico col. 4 lines 19-22). A hand of initially dealt cards is dealt to a player and displayed on the screen display (See Carrico Fig. 2; col. 4 lines 30-32). The player then analyzes the dealt cards and undealt cards to determine possible final hand compositions. The player selects none, one or more held cards from said hand of dealt cards (See Carrico col. 5 lines 13-16). One additional card is dealt to the player to replace each card not held in order to provide a final hand composition. (See Carrico col. 5 lines 17-22). It is then determined if the final hand matches one of the plurality of preselected combination of cards as to the first wager (See col. 5 lines 23-26). A card determining means is in communication with the computing device for determining in succession the composition of the initial hand of cards and for randomly determining the composition of the final hand of cards. The card determining means determines the composition of the final

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hand of cards and deals the cards needed to complete the hand so as to provide a payout to the player based on the composition of the final hand of cards (See Carrico col. 4 lines 33-67; col. 5) [claims 1, 6]. The poker game is 5-card draw poker (See Carrico col. 2 lines 55-59) [claims 3, 4, 8, 9]. At a certain stage of the game, i.e. after an initial deal of cards and discards, the player is offered an additional wagering opportunity based on a possible final hand composition, only if the player decides not to hold all the initially dealt cards and it is not impossible to improve the poker hand ranking of the initially dealt cards [claims 1, 6]. The player must make a second wager for this opportunity. The held cards are automatically held upon acceptance of the second wager [claims 5, 10]. Once cards are held and discarded ones replaced, it is then determined if the final hand composition matches a winning hand according to the second pay table. Consequently, the player makes a wager on the final composition of the player's hand after the initial deal but before the final draw. When the player decides to make this second wager, the wager is for an improved poker hand as compared to the hand of initially dealt cards (See Carrico col. 5 lines 32-67) [claims 2, 7]. Carrico lacks in disclosing this second betting opportunity as a proposition bet in which the outcome of the bet is determined separately from the initial wager and is placed after the initial hand of cards are dealt.

Yoseloff teaches of placing proposition bets in the game of poker after the initial hand of cards are dealt (See Yoseloff col. 4 lines 57-67; col. 6 lines 13-33)

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[claims 1, 6]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of placing proposition bets in the game of poker after the initial cards are dealt in the invention of Carrico. By placing an additional bet as in the game of Carrico after the cards have been dealt but before the draw, a player can make an educated wager since they know what cards they already have and what cards they would need to draw in order to have a winning outcome. Furthermore, players enjoy the opportunity to win more than one wager, by using the prepositional betting system of Yoseloff in the invention of Carrico, players could still win their initial wager as well as their second wager instead of merely adding the second wager to the first in which case if a winning outcome does not occur with regards to the second wager, the player automatically loses his first wager too. Consequently, by using the method of Yoseloff, players have more enjoyment in the game since they have two chances of winning instead of just one. Furthermore, players would be more inclined to place an additional wager if they knew that they were not automatically forfeiting their first wager.

**Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoseloff in view of Carrico et al., U.S. Patent No.**

**6,416,407 B1.** Yoseloff lacks in specifically disclosing that the poker hand ranking of the possible final hand composition is an improved poker hand ranking as compared to the poker hand ranking of the initially dealt cards and of having the machine automatically determine the player cards to hold when



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the player places the wager. Carrico teaches that when a player wishes to wager on a second portion of the game, the machine automatically determines the player cards to hold when the player places the wager (See Carrico col. 5 lines 47-59) [claim 18]. For example, when a player decides to hold certain cards for the next round of play they press the hold buttons. The player then makes the wager and at this point the gaming machine reads the cards the player wants to hold, thereby, "automatically determines the player cards to hold when the player places the wager". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the gaming machine of Yoseloff "automatically" hold a player's when wagering. By automatically holding the player's cards, the gaming machine is in the proper state to discard the non-held cards and to replace them thereby making a final card hand for the player. In Carrico, a player attempts by discarding and drawing cards in the poker game, to have a final hand composition that is an improved poker hand ranking as compared to the poker hand ranking of the initially dealt cards (See Carrico col. 5 lines 62-67) [claim 12]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the final hand composition be an improved poker hand in the invention of Yoseloff. By having an improved poker hand, players earn more prizes and enjoy the game more.

***Response to Amendment***

It has been noted that claims 1, 6, 11, 13, 14 and 15 have been amended.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Due to Applicant's amended claim language now including making the proposition bet after the initial hand of cards has been dealt, the Examiner agrees that the reference Roberts, does not disclose this feature. Therefore, a new reference Yoseloff has been used, to meet this claim limitation.

In response to Applicant's argument that Carrico teaches against the use of separate proposition bets since it requires the player to give up any potential winnings of the second hand if the player elects to draw additional cards, the Examiner notes that while the additional wagers of Carrico require the player to give up some potential winnings, Carrico does not teach against the use of separate proposition bets. Carrico teaches of a draw poker game with multiple wagering options. Yoseloff teaches of a draw poker game with proposition bets. It is therefore obvious to combine the two references so that the player's of Carrico may conduct proposition bets and have the chance of increased rewards.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

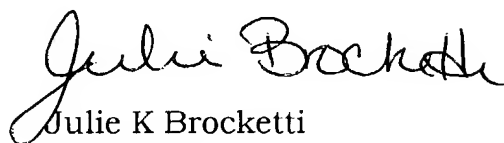
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 703-308-7306. The examiner can normally be reached on M-Th 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 703-308-2064. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

A handwritten signature in cursive script, reading "Julie K Brockett".

Julie K Brockett  
Examiner  
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